



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2016-0045]

Joint Development: Updated Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of update to joint development circular.

SUMMARY: The Federal Transit Administration (FTA) has issued and placed in the docket and on its Web site updated guidance, in the form of a circular, on joint development projects making use of FTA funds or FTA-funded property. The purpose of the update is to implement recent statutory changes and clarify guidance in FTA Circular 7050.1: *FTA Guidance on Joint Development*. Because the update reflects existing statute and imposes no new requirements on recipients, FTA is not soliciting public comment.

DATES: The prohibition on the outfitting of commercial space as part of FTA-assisted joint development projects ended when the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94) took effect on October 1, 2015. The policy guidance regarding the "fair share of revenue" for affordable housing as part of FTA-assisted joint development projects will be effective [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For policy guidance questions, Daniel Schned, Office of Budget and Policy, Federal Transit Administration, 1200 New Jersey Ave. SE., Room E52-313, Washington, DC 20590, phone: (202) 366-1652, or email, daniel.schned@dot.gov. For legal questions, Christopher T. Hall, Office of Chief

Counsel, same address, Room E56-311 phone: (202) 366-5218; or email: *Christopher.Hall@dot.gov*.

SUPPLEMENTARY INFORMATION: This notice provides a summary of the updates to Circular 7050.1. The Circular itself is not included in this notice; instead, an electronic version may be found on FTA’s Web site, at www.transit.dot.gov, and in the docket, at www.regulations.gov. Paper copies of the Circular may be obtained by contacting FTA’s Administrative Services Help Desk, at (202) 366–4865.

Table of Contents

I. Overview

II. Updates to Circular 7050.1

A. Outfitting Commercial Space

B. Affordable Housing

I. Overview

FTA is publishing updates to Circular 7050.1, regarding joint development, that affect: (1) the eligibility of outfitting space for commercial use under the FAST Act; and (2) the “fair share of revenue” for affordable housing as part of FTA-assisted joint development projects.

II. Updates to Circular 7050.1

A. Outfitting Commercial Space

Section 3002(2)(B) of the FAST Act amended Section 5302 of title 49, United States Code, by striking Section 5302(3)(G)(vi). Section 5302(3)(G)(vi) had specified that, for the purpose of programs under Chapter 53, a capital project for joint development “does not include outfitting of commercial space (other than an intercity bus

or rail station or terminal) or a part of a public facility not related to public transportation.”

FTA has determined that the best way to comply with Section 3002(2)(B) of the FAST Act is to strike Section 5, “Ineligible Activities,” of Chapter III of Circular 7050.1 and all references to the section.

B. Affordable Housing

Section 5302(3)(G)(iii) of title 49, United States Code, requires FTA-funded joint development projects to provide a “fair share of revenue that will be used for public transportation.” Prior to the effective date of Circular 7050.1 on October 1, 2014, FTA generally deferred to a project sponsor’s assessment of what is a “fair share” of revenue, and did not require any specific amount of transit funding from a joint development project. With Circular 7050.1, FTA determined that a fair share of revenue means that a joint development project must produce revenue for transit at least equal to the Federal Government’s initial investment in the joint development. (79 Fed. Reg. 50,728; 50,731-32 August 25, 2014).

At the same time, FTA recognized that the revenue generated by below-market-rate development would be less compared to market-rate commercial, residential, or mixed-use development. So as not to impede these developments, Circular 7050.1 included an exception for joint development projects that are “community service” or “publicly-operated” facilities, thereby exempting them from the minimum fair share of revenue requirement. FTA also acknowledges that many transit agencies have incorporated affordable housing goals into their joint development policies. Similar to community service and publicly-operated facilities, affordable housing also may generate

less revenue than market-rate development. Accordingly, FTA will allow the fair share of revenue provided by joint development projects including certain affordable housing to be less than the minimum threshold established in Circular 7050.1.

FTA defines the term “affordable housing” to mean legally binding affordability restricted housing units available to renters with incomes below 60 percent of the area median income or owners with incomes below the area median.

Given that this update of Circular 7050.1 is a direct implementation of a statutory change and imposes no new requirements on grantees, FTA is not soliciting public comment.

Carolyn Flowers

Acting Administrator

[FR Doc. 2016-31443 Filed: 12/28/2016 8:45 am; Publication Date: 12/29/2016]